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Hearing Date: January 18, 2019 at 10:00am
Objection Deadline: January 11, 2019

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

AMENDED MOTION FOR RECONSIDERATION²

Related Docket No. 776

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC(6546); Sears Operations LLC(4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); SHC Licensed Business LLC (3718); SHC Promotions LLC (9626); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

² The motion is being amended from the one filed under Docket No. 937 to reduce the deadline to assume or reject the Lease to February 12, 2019, the expiration date of the 120-day statutory period granted by 11 U.S.C. §365(d)(4)(A)(i).

TO THE HONORABLE COURT:

COMES NOW creditor Santa Rosa Mall, LLC (“Santa Rosa Mall”), and respectfully states and prays as follows:

Factual and Procedural Background

1. Santa Rosa Mall is a shopping mall located in Bayamon, Puerto Rico.
2. Pursuant to a *Lease Agreement* executed by Santa Rosa Mall and Sears, Roebuck of Puerto Rico, Inc. (“Sears”) on September 22, 1965, Sears leases from Santa Rosa Mall its anchor store (Store No. 1915). We attach the *Lease Agreement* as **Exhibit I**. Store No. 1915 has been opened and operating in Santa Rosa Mall ever since until Hurricane Maria.
3. On September 20, 2017, Puerto Rico was severely devastated by Hurricane Maria, a Category 5 hurricane that weakened to a high-end Category 4 by the time it struck Puerto Rico. This Court may take judicial notice of Hurricane Maria and its trajectory under Fed. R. Evid. 201.
4. Sections 2.01, 4.01, 6.03 and 6.04 of the *Lease Agreement* require Sears to preserve, repair, restore or rebuild the leased premises, especially in case of damage by a windstorm.
5. Hurricane Maria caused substantial damage to Store No. 1915, which has remained closed to the public and inoperative since September 20, 2017.
6. On October 15, 2018, the Debtors filed the instant Chapter 11 bankruptcy petition (Docket No. 1).
7. On November 1, 2018, the Debtors filed a *Motion for Authority to Extend the Time to Assume or Reject Unexpired Leases and Subleases of Nonresidential Real Property* (“*Motion for Extension of Time*”, Docket No. 426) to extend the initial 120-day period to assume or reject all unexpired leases and subleases of non-residential real property for an additional 90 days, that is, from February 12, 2019, up to and including May 13, 2018.
8. On November 15, 2018, a hearing was held to consider the *Motion for Extension of*

Time and on November 16, 2018, the Court entered an *Order* (the “*Order*”, Docket No. 776) granting the *Motion for Extension of Time*, thereby extending the time to assume or reject unexpired leases until May 13, 2019.

Applicable Law and Discussion

(A) *Reconsideration standard under Fed. R. Bankr. P. 9023*

9. Because the *Order* was entered on November 16, 2018, the foregoing motion is timely under Fed. R. Bankr. P. 9023, which makes Fed. R. Civ. P. 59(e) applicable to bankruptcy proceedings.

10. Federal Courts within the Second Circuit may alter or amend an order or judgment pursuant to Fed. R. Civ. P. 59(e) “to correct a clear error of law or prevent manifest injustice.” Munafo v. Metro. Transp. Auth., 381 F.3d 99, 105 (2nd Cir. 2004).

(B) *The 90-day extension of time to determine if it will assume or reject Santa Rosa Mall’s Lease Agreement regarding Store No. 1915 (an anchor store) constitutes a manifest injustice in detriment of Santa Rosa Mall*

11. Sears Store No. 1915 is the anchor store in Santa Rosa Mall. An anchor store is a major retail store used to drive business to smaller retailers.

12. As explained In re Elder-Beerman Stores Corp., 207 B.R. 548 (Bankr. S.D. Ohio 1997):

An anchor store is usually a retail department store located within a shopping center complex that **serves to draw customers and other specialty stores into the shopping center. Anchor stores are crucial to the overall success of such shopping centers.**

Id. at 581 (emphasis added).

13. Store No. 1915 has remained closed to the public and not operational for repairs since Hurricane Maria, that is, since September 20, 2017, that is, for 438 days. As an anchor store,

the closing of Store No. 1915 is directly detrimental to Santa Rosa Mall precisely because its closing results in customers not coming to Santa Rosa Mall and the smaller retail stores therein.

14. As of today, construction and repairs to rehabilitate and reopen Store No. 1915 have been completely halted. Each passing day that Sears Store No. 1915 remains closed directly impacts Santa Rosa Mall adversely.

15. In light of the time elapsed since Hurricane Maria, an additional extension of 90 days for Sears to determine if it will assume/reject the *Lease Agreement* is prejudicial to Santa Rosa Mall.

16. In the balance of equities, any potential harm to the Debtor in reducing such deadline to February 12, 2019, the expiration date of the 120-day statutory period granted by 11 U.S.C. § 365(d)(4)(A)(i), is outweighed by the harm caused to Santa Rosa Mall in not reducing it.

Prayer for Relief

WHEREFORE, Santa Rosa Mall respectfully requests the Court to reconsider the *Order* (Docket No. 776) to reduce the extension of time granted to February 12, 2019, as set forth in the attached proposed order as **Exhibit A**. In addition, Santa Rosa Mall requests the Court to consider this motion at the hearing scheduled for January 18, 2019, pursuant to the *Amended [] Case Management Order* (Docket No. 405, p. 12-13, ¶ 32).

Respectfully submitted.
Dated: December 13, 2018
Orlando, Florida

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